

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition for Rulemaking to Prohibit)	WC Docket No. _____
In-Person Distribution of Handsets)	
to Prospective Lifeline Customers)	
)	
Lifeline and Link Up Reform)	WC Docket No. 11-42
and Modernization)	
)	
Lifeline and Link Up)	WC Docket N. 03-109
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	

PETITION FOR RULEMAKING

TracFone Wireless, Inc. (“TracFone”), pursuant to Section 1.401 of the Commission’s Rules (47 C.F.R. § 1.401), petitions the Commission to promptly commence a rulemaking proceeding for the purpose of amending its rules to prohibit in-person distribution of handsets to prospective Lifeline customers.

The primary purpose for the proposed rule would be to prevent waste, fraud, and abuse of Universal Service Fund (“USF”) resources. A secondary, but also important, purpose would be to improve the perception of the Lifeline program in the face of program critics who have called for its elimination, often in light of press reports of unscrupulous providers and irresponsible agents who have been recorded literally handing out handsets on street corners with no apparent efforts to verify the consumers’ Lifeline eligibility. While such conduct may be atypical, those reports besmirch the entire Lifeline program and those who regulate it. A rule prohibiting in-person distribution of handsets will address concerns that some Eligible Telecommunications Carriers (“ETCs”) may be enrolling individuals in the Lifeline program and providing them with

handsets and Lifeline-supported service, and receiving reimbursement from the USF without verifying the applicants' eligibility for Lifeline-supported service and that no other persons in the applicants' households are receiving Lifeline-supported service in accordance with applicable rules.

BACKGROUND

In 2012, the Commission adopted a series of reforms related to the Lifeline program funded by the USF.¹ A primary purpose of the reforms was to “substantially strengthen protections against waste, fraud, and abuse.”² The reforms included various methods to reduce the number of ineligible subscribers in the Lifeline program, such as requiring ETCs to de-enroll subscribers who receive Lifeline service from more than one ETC or who are members of a household that already receives Lifeline service from a specific ETC; requiring ETCs to de-enroll Lifeline subscribers who have not used the service for a consecutive 60 day period; and requiring ETCs to verify annually the continued eligibility of their Lifeline subscribers.³ As a means to protect against waste, fraud, and abuse of USF funds that is directly related to enrolling households who are not eligible for Lifeline, the Commission revised its rules to require (1) an ETC to obtain proof of eligibility by accessing an official source of eligibility data, receiving notice from a state administrator that the consumer is eligible, or reviewing subscriber-provided documents showing proof of eligibility⁴ and (2) a new subscriber to make certifications

¹ See Lifeline and Link Up Reform and Modernization et al., WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (“Lifeline Reform Order”).

² Id. ¶ 1.

³ See 47 C.F.R. §§ 54.405(e)(2)-(3), 54.410(f).

⁴ See 47 C.F.R. § 54.410(b)-(c).

regarding the subscriber's understanding of and compliance with the program rules at the time of enrollment.⁵

The reforms adopted in the Lifeline Reform Order have resulted in substantial savings to the USF. The Wireline Competition Bureau reported in January 2013 that the Commission's Lifeline reforms generated more than \$213 million in savings to the USF during 2012 – significantly exceeding the Commission's goal of \$200 million savings.⁶ In February 2013, the Commission announced that savings from its comprehensive reform of the Lifeline program are on track to reach \$400 million in 2013 and “to save the program more than \$2 billion through 2014, fundamentally altering the course of the program.”⁷ Despite the immense success of the Commission's reforms in saving USF resources, critics of the Lifeline program continue to express concerns about waste, fraud, and abuse.⁸ A significant source of concern regarding the improper use of USF resources is found in news reports that show representatives of ETCs distributing handsets to individuals in public places.⁹ Such reports refer to instances when an

⁵ See 47 C.F.R. § 54.410(d).

⁶ Public Notice – Wireline Competition Bureau Issues Final Report on Lifeline Program Savings Target, WC Docket No. 11-42, DA 13-130, January 31, 2013.

⁷ News – FCC Reports: Major Reforms to Lifeline Program on Track to Cut at Least an Additional \$400 Million in Waste, Fraud, and Abuse in 2013; Reforms on Schedule to Save More Than \$2 Billion by End of 2014, February 12, 2013.

⁸ See, e.g., *Lifeline Abuse: Finding State and Federal Investigation Documents*, Wall Street Journal, February 19, 2013; *Millions Improperly Claimed U.S. Phone Subsidies*, Wall Street Journal, February 11, 2013. In addition, on April 23, 2013, the House of Representatives, Committee on Energy and Commerce, Subcommittee on Communications and Technology, conducted a hearing on “The Lifeline Fund: Money Well Spent?” to examine reforms to the Lifeline program.

⁹ See, e.g., *Free Cell Phone Fraud Uncovered*, November 5, 2012, available at <http://www.fox23.com/mostpopular/story/Free-cell-phone-fraud-uncovered/Cc07MxBthEyt4KnUJ3EWpA.csp>; *Oklahoma Is Ground Zero for Government Cell Phone Fraud*, October 25, 2012, available at <http://www.newson6.com/story/19914572/oklahoma-is-ground-zero-for-government-cell-phone-fraud>.

ETC's representative provides a free handset to a person without requiring the recipient to provide proof of eligibility as required by Commission Rule 54.410(c)(1)(i) (47 C.F.R. § 54.410(c)(1)(i)). Although there may be situations in which handsets are not distributed to Lifeline applicants until the Lifeline enrollment application process is complete and the ETC has determined that the applicants are Lifeline-eligible in accordance with the Commission's rules, in-person distribution of handsets remains a practice that invites fraud and is difficult to police.

TracFone is concerned about waste, fraud, and abuse of USF resources and has fully supported the Commission's efforts to prevent, detect, and eliminate any such waste, fraud, and abuse. Indeed, the rules promulgated in the Lifeline Reform Order include several important reforms which TracFone has proposed or supported.¹⁰ TracFone has continued to submit proposals to the Commission for additional reforms to prevent fraudulent Lifeline enrollment and to conserve USF resources. For example, on May 30, 2012, TracFone petitioned the Commission to require ETCs to not only view documentation of program-based eligibility (as is required under 47 C.F.R. § 54.410(c)(1)(i)(B) when eligibility cannot be certified by accessing a database), but also to retain and make available for audit copies of documentation of program-based Lifeline eligibility submitted by applicants for enrollment.¹¹ Imposition of a document retention requirement as proposed in that petition would close an enormous loophole which currently exists in the Commission's rules requiring applicants to provide proof of program-

¹⁰ TracFone waste, fraud, and abuse prevention proposals which were adopted by the Commission in the Lifeline Reform Order include: 1) elimination of Link Up; 2) de-enrollment for 60 days' non-usage; and 3) requiring ETCs to obtain Lifeline applicants' date of birth and Social Security Number (last four digits).

¹¹ See Supplement to Petition for Reconsideration and Emergency Petition to Require Retention of Program-Based on Eligibility Documentation, filed on May 30, 2012 in WC Docket No. 11-42. Although the Commission has not yet acted on the petition, it did invite public comment and virtually all commenters favored mandatory document retention.

based Lifeline eligibility. By this Petition, TracFone asks the Commission to amend its rules to prohibit in-person distribution of handsets to prospective Lifeline customers as another important means to prevent waste, fraud, and abuse of USF resources.

THE COMMISSION SHOULD PROHIBIT IN-PERSON DISTRIBUTION OF HANDSETS TO PROSPECTIVE LIFELINE CUSTOMERS AS A MEANS TO PREVENT WASTE, FRAUD, AND ABUSE OF USF RESOURCES

Section 214 of the Communications Act requires ETCs to advertise the availability of Lifeline services “using media of general distribution.”¹² Commission rules further require ETCs to “[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.”¹³ Although Commission rules require ETCs to make certain disclosures in their marketing materials,¹⁴ the Commission has stated that “ETCs should have the flexibility to market their Lifeline-supported services in creative and innovative ways.”¹⁵

Many ETCs, including TracFone, engage in “grass roots” efforts to publicize the availability of Lifeline services, as is required by the Commission’s rules. Often these “grass roots” efforts involve community-based organizations who are familiar with the portion of the population within their communities which is likely to be Lifeline-eligible. Such efforts, if conducted with meaningful safeguards, enable low-income individuals to become aware of Lifeline services while ensuring that only those who are eligible receive Lifeline benefits. Grass

¹² 47 U.S.C. § 214(e)(1)(B).

¹³ 47 C.F.R. § 54.405(b).

¹⁴ See 47 C.F.R. § 54.4059(c) (requiring ETCs to indicate on all materials describing the service “that it is a Lifeline service, that Lifeline is a government assistance program, the service is non-transferable, only eligible consumers may enroll in the program, and the program is limited to one discount per household.”)

¹⁵ Lifeline Reform Order, ¶ 277.

roots marketing is an effective way to reach Lifeline-eligible households and educate them as to the availability of Lifeline-supported service. Unlike grassroots marketing, in-person handset distribution is not an effective consumer outreach method since it invites fraud.

When an ETC provides a prospective Lifeline customer with a handset on a street corner or elsewhere in a neighborhood, there is an increased opportunity for fraud to be committed. For one thing, there is no way to verify whether the person receiving the handset even completed an application form, let alone, had the information in the application verified by the ETC on whose behalf the handset was provided. As described in the articles cited in footnote 8, there have been reports of ETCs providing individuals with free handsets even when those individuals present false information about their identity or, in some cases, even when they do not provide any proof of eligibility.¹⁶ Allowing ETCs to distribute handsets in real time to prospective Lifeline customers may often prevent ETCs from performing the necessary verification to certify that those customers are eligible for Lifeline benefits in accordance with all applicable Commission and state enrollment requirements.

TracFone, the nation's leading Lifeline provider with more than 3.7 million Lifeline customers enrolled in 39 states, does not provide a handset to any Lifeline applicant until an application form has been completed and submitted to the company, and until the company has concluded in accordance with applicable rules that the applicant is qualified and that no other member of the applicant's household is receiving Lifeline-supported services. After that process

¹⁶ This is not to suggest or imply that ETCs who use in-person handset distribution are violating the applicable eligibility verification and Lifeline enrollment rules. The point is that the practice of in-person handset distribution makes it easier for ETCs to provide Lifeline phones to consumers without first determining whether those consumers are eligible to receive Lifeline-supported service in accordance with the Commission's rules, and more difficult to enforce the rules and police violations of those rules.

has been completed, the customer is enrolled in the program and is sent via overnight delivery service a welcome package containing a handset with one month's minutes already loaded, and instructions on the program. Based on TracFone's experience, whatever delay is caused by this process is more than outweighed by the enhanced assurance that only qualified persons are enrolled and that no person is enrolled and provided with a handset or service until the applicant's eligibility has been determined and the process has been completed.

The fact that TracFone has been able to enroll more than 3.7 million active Lifeline customers nationwide without ever handing out a handset on a real time basis demonstrates that in-person handset distribution is not necessary to operate a successful Lifeline program.¹⁷ Moreover, requiring ETCs to send handsets via U.S. mail or approved delivery services after the ETC has verified the applicants' eligibility in accordance with applicable rules would enable ETCs to have sufficient time to complete the eligibility verification process, as well as provide an additional check on the validity of the address provided on the application before the applicant has been approved for enrollment, provided a handset, and before the applicant is allowed to use the service to send and receive calls. For the reasons described in this Petition, imposition of an outright prohibition on in-person Lifeline handset distribution would materially reduce the incidence of fraudulent enrollment caused by unscrupulous ETCs or overzealous agents enrolling customers in Lifeline programs without properly verifying customer eligibility.

¹⁷ TracFone anticipates that ETCs who utilize in-person handset distribution methods and who will oppose this Petition may claim that TracFone, as the largest Lifeline provider, does not need to use such methods and that permitting real time in-person handset distribution is necessary to enable smaller ETCs and new entrants to compete. That argument, of course, ignores the fact that when TracFone began offering Lifeline service in 2008, it had no Lifeline customers and had to build its Lifeline program from the ground up just as all other ETCs – wireless and wireline – have had to do. It has been able to do that without handing out a single handset on a real time basis.

Moreover, a prohibition on in-person handset distribution would eliminate the negative news stories and video reports of such conduct. Those reports have embarrassed the Lifeline provider industry and those who regulate it, and have provided grist for program critics who have sought to limit the Lifeline program, if not eliminate it entirely. Lifeline is an important program which provides critical access to the nation's telecommunications networks by persons in need. The Commission's focus should remain on making such adjustments to the program as necessary to detect and prevent abuses while ensuring that Lifeline-supported service remains available to those who qualify for it and who need it. Prohibition of in-person handset distribution would be an important step in that effort.

CONCLUSION

For the reasons set forth in this Petition, TracFone respectfully requests that the Commission promptly commence a rulemaking proceeding for the purpose of amending its rules to prohibit in-person distribution of handsets to prospective Lifeline customers.

Respectfully submitted,

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